

November 22, 2013

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Douglas W. Ferguson, Esquire
Attorney at Law
238 Walnut Street
Meadville, PA 16335

RE: Transfer of Controlling Interest in Corporation

Dear Attorney Ferguson:

ISSUE: This office is in receipt of your correspondence dated October 8, 2013, wherein you indicate that you presently represent Shaw Family Enterprises, LLC (“Shaw Family”) and the one hundred percent (100%) shareholder Brain Shaw. You state that Mr. Shaw is contemplating transferring a controlling interest in the corporation to an individual whom you also represent. You state that you have reviewed various regulations and that you are of the opinion that because there will be a change in ownership of the corporation that holds the license, a transfer of this interest needs to be reported to the Pennsylvania Liquor Control Board (“Board”). You ask whether Form PLCB-866 must be filed and if so, what fee must accompany the filing. Further, you ask if there is a requirement to post notice of this change of ownership.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that the Shaw Family holds Restaurant Liquor License No. R-17381 (LID 57197) for premises located at 15713 U.S. Hwy 6 & 19, Meadville, Pennsylvania.

OPINION: While a change in the ownership of the stock of a corporate license is not considered to be a transfer, the transaction still needs to be reported to the Board within fifteen (15) days of the change. The Board’s Regulations require that retail liquor licensees reporting a change in officers, directors or stockholders that would constitute a change in majority ownership or controlling interest post notice of the change. [40 Pa. Code § 3.13(b)]. Controlling interest is defined as “the power or authority to manage, direct, govern, administer or oversee the operation of a licensed business.” [40 Pa. Code § 3.11]. Change of business structure forms for changes of corporate officers [Form PLCB-866] shall be accompanied by a fee

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of two hundred dollars (\$200.00) when the change of officer does not constitute a change in majority/controlling interest. [40 Pa. Code § 5.91(d)]. If the change of corporate officer constitutes a change in majority/controlling interest, fees will be assessed in accordance with section 614-A of The Administrative Code of 1929 (71 P. S. § 240.14A). [Id.]. In this case, you have indicated that the change in structure would constitute a change in controlling interest; therefore, the Form PLCB-866 must be accompanied by a fee of six hundred-fifty dollars (\$650.00). Please also note that Form PLCB-2018, Request for Criminal History Check and a ten dollar (\$10.00) fee must be submitted for each new owner.

In response to your second question, because the transaction involves a change in the controlling interest your client would be required to post notice (Form PLCB-1296) of the change. [40 Pa. Code § 3.13(b)].

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Jerry W. Waters, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 13-502